

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DIANNE GRAHAM	:	CIVIL ACTION
	:	
v.	:	
	:	
TOLTZIS COMMUNICATIONS, INC.,	:	
et al.	:	98-6269

MEMORANDUM AND ORDER

Fullam, Sr. J.

April , 2000

Plaintiff alleges that her firing by the defendants violated the Pregnancy Discrimination Act of 1978, 42 U.S.C. §2000e(k) and the Pennsylvania Human Relations Act, 43 P.S. §951. Defendants have filed a Motion for Summary Judgment, accompanied by voluminous (and often repetitive) exhibits; and have requested a hearing on their motion. It is, however, abundantly clear that the motion must be denied, and that oral argument is unnecessary and would merely add to the excessive litigation costs already run up by the parties.

Defendants' brief asserts that although defendants are confident they can prove at trial that they had legitimate business reasons for dismissing plaintiff, and that her claim that these reasons are merely a pretext for pregnancy discrimination is unfounded, they seek summary judgment only on the theory that plaintiff cannot establish a prima facie case. There is no dispute about the fact that plaintiff did become

pregnant, and was discharged shortly after defendants became aware of her pregnancy, but defendants contend that plaintiff is unable to make out a prima facie case because she was not qualified for the job. Defendants apparently concede that, when plaintiff was hired a few months before becoming pregnant, her application satisfied all of the requirements of the job, and defendants then believed she was indeed qualified for the position. However, as a result of discovery conducted in this litigation, defendants have now learned that plaintiff's job performance in her earlier employment was unsatisfactory. They claim she would not have been hired in the first place, had they been aware of her earlier unsatisfactory job experiences.

The evidence relied upon by the defendants falls far short of establishing that, as a matter of law, plaintiff was not qualified for the job for which she was hired. When interviewed for employment by the defendants, plaintiff stated that her previous employment had been terminated because of "creative differences" with her previous employer. Plaintiff, in fact, still views the earlier termination of her employment as a mutual decision, based upon disagreements over creative matters. Defendants have, through discovery, developed evidence that plaintiff was fired from her previous position, rather than that the parting was by mutual consent. With the convenient benefit of hindsight, defendants now assert that, if they had known all

of the pertinent facts, they would not have offered plaintiff employment. Even if true, however, this does not mean that plaintiff was not qualified for the job. Nothing which the defendants have learned about her previous career undercut her professional qualifications; she met the stated job-description. If her performance while employed by the defendants was indeed unsatisfactory, and not a mere pretext for pregnancy discrimination, defendants will be entitled to prevail at trial. Since the summary judgment record demonstrates that plaintiff can make out a prima facie case, and since all other issues must await trial, the defendants' motion will be denied.

An Order follows.

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ORDER

AND NOW, this        day of April, 2000, IT IS ORDERED  
that the defendants' Motion for Summary Judgment is DENIED.

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John P. Fullam, Sr. J.